

MONTANA LEGISLATIVE HISTORY

Chapter 497 1979

Bill H 606 S _____

Original bill & history ☒ c

H. Committee on State Admin.

S. Committee on Bus & Industry

Hearing Date(s) _____ c

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Date Out 2/15 ☒ c

out 3/5 ☒

Did this bill originate in an interim committee? ☐ Yes ☒ No

Committee _____

Report _____

*Request of Legislative
Audit Committee*

CHAPTER NO. 497

HOUSE BILL NO. 606

INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVERTSEN

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

February 6, 1979	Introduced and referred to Committee on Business and Industry.
February 7, 1979	Rereferred to Committee on State Administration.
February 16, 1979	On motion by chief sponsor, Representative Sivertsen added as sponsor.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.
	Third reading, passed.
	Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Business and Industry.
March 5, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 7, 1979	Statement of Intent adopted.
	Second reading, concurred in as amended.

March 7, 1979

On motion, taken from Committee on Bills and Journal and referred to Committee on Rules. Motion adopted.

March 9, 1979

Committee on Rules recommend bill with Statement of Intent be rereferred to second reading. Report adopted.

March 12, 1979

Second reading, concurred in.

March 14, 1979

Third reading, concurred in as amended.

IN THE HOUSE

March 15, 1979

Returned from second house. Concurred in as amended.

March 17, 1979

Second reading, amendments rejected.

On motion, Free Joint Conference Committee requested.

March 19, 1979

Free Joint Conference Committee appointed.

March 22, 1979

Free Joint Conference Committee dissolved.

On motion, Free Conference Committee requested.

Free Conference Committee appointed.

March 23, 1979

Free Conference Committee reported.

March 24, 1979

On motion, consideration passed until the 71st Legislative Day.

March 28, 1979

Second reading, adopted.

Adopted by Senate.

March 29, 1979

Third reading, adopted.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 606
2 INTRODUCED BY Ellet Jenkins - Elbert Sull
3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
6 REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY
7 REGULATION CREATED IN THE DEPARTMENT OF BUSINESS REGULATION;
8 TERMINATING OPERATION OF THE BOARD OF REAL ESTATE ON JULY 1,
9 1979; ELIMINATING REFERENCES TO THE BOARD OF REAL ESTATE;
10 PERMITTING ADOPTION OF A FEE SCHEDULE; AMENDING SECTIONS
11 2-8-121, 37-51-102, 37-51-205, 37-51-311, 76-4-1101,
12 76-4-1202, AND 76-4-1203, MCA; REPEALING SECTIONS 2-15-1642
13 AND 37-51-101, MCA; AND PROVIDING AN EFFECTIVE DATE."

14
15 WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
16 will terminate the board of real estate and require a
17 performance evaluation of the board by the legislative audit
18 committee; and

19 WHEREAS, as a result of the performance evaluation, the
20 legislative audit committee recommends that the board of
21 real estate be abolished and regulation of the real estate
22 industry be transferred to the board of realty regulation in
23 the department of business regulation and that certain
24 statutory provisions be amended or repealed.
25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 NEW SECTION. Section 1. Board of realty regulation.

3 (1) There is a board of realty regulation.

4 (2) The board consists of five members appointed by
5 the governor with the consent of the senate. Two members
6 shall be licensed real estate brokers or salesmen who have
7 been actively engaged in the real estate business as a
8 broker or salesman in this state for not less than 5
9 continuous years before appointment. Three members shall be
10 representatives of the public who are not state government
11 officers or employees and who are not engaged in business as
12 a real estate broker or salesman. The members shall be:

13 (a) residents of this state; and

14 (b) appointed so not more than three members are from
15 the same congressional district.

16 (3) Not more than three members, including the
17 chairman, may be from the same political party.

18 (4) The members shall serve staggered terms of 4
19 years.

20 (5) The board is allocated to the department for
21 administrative purposes only as prescribed in 2-15-121.

22 Section 2. Section 2-8-121, MCA, is amended to read:

23 "2-8-121. Effect of termination. Upon Unless otherwise
24 provided, upon termination, each agency or unit shall
25 continue in existence until July 1 of the next succeeding

1 year for the purpose of winding up its affairs. During the
 2 windup period, termination does not reduce or otherwise
 3 limit the powers or authority of each respective agency
 4 except that no action may be taken which would continue in
 5 effect beyond the 1-year windup period. Upon the expiration
 6 of the 1 year after termination, each agency not modified or
 7 reestablished shall be abolished and all unexpended balances
 8 of appropriations, allocations, or other funds shall revert
 9 to the fund from which they were appropriated or, if that
 10 fund is abolished, to the general fund."

11 Section 3. Section 37-51-102, MCA, is amended to read:
 12 "37-51-102. Definitions. Unless the context requires
 13 otherwise, in this chapter the following definitions apply:

14 (1) "Board" means the board of real-estate-provided
 15 ~~for in 2-15-1042 realty regulation provided for in (section~~
 16 ~~1)].~~

17 (2) "Broker" includes an individual who for another or
 18 for a fee, commission, or other valuable consideration or
 19 who with the intent or expectation of receiving the same
 20 negotiates or attempts to negotiate the listing, sale,
 21 purchase, rental, exchange, or lease of real estate or of
 22 the improvements thereon or collects rents or attempts to
 23 collect rents or advertises or holds himself out as engaged
 24 in any of the foregoing activities. The term "broker" also
 25 includes an individual employed by or on behalf of the owner

1 or lessor of real estate to conduct the sale, leasing,
 2 subleasing, or other disposition thereof at a salary or for
 3 a fee, commission, or any other consideration. The term
 4 "broker" also includes an individual who engages in the
 5 business of charging an advance fee or contracting for
 6 collection of a fee in connection with a contract by which
 7 he undertakes primarily to promote the sale, lease, or other
 8 disposition of real estate in this state through its listing
 9 in a publication issued primarily for this purpose or for
 10 referral of information concerning real estate to brokers,
 11 or both, and any person who aids, attempts, or offers to
 12 aid, for a fee, any person in locating or obtaining any real
 13 estate for purchase or lease.

14 (3) "Department" means the department of professional
 15 ~~and occupational licensing provided for in Title 2, chapter~~
 16 ~~15, part 16 business regulation provided for in 2-15-1801.~~

17 (4) "Person" includes individuals, partnerships,
 18 associations, and corporations, foreign and domestic, except
 19 that when referring to a person licensed under this chapter,
 20 it means an individual.

21 (5) "Real estate" includes leaseholds as well as any
 22 other interest or estate in land, whether corporeal,
 23 incorporeal, freehold, or nonfreehold and whether the real
 24 estate is situated in this state or elsewhere.

25 (6) "Salesman" includes an individual who for a

salary, commission, or compensation of any kind is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 4. Section 37-51-205, MCA, is amended to read:

"37-51-205. Compensation of members -- expenses--- limitation. (1) Each member of the board shall receive as compensation for each one-half day or--portion--thereof actually spent on his official duties the sum of \$750 ~~135~~ and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of other duties provided for by the board.

(2)--No member of the board may be reimbursed from--the board's--earmarked-revenue-fund-for-travel-outside-the-state on-business-of-the-board."

Section 5. Section 37-51-311, MCA, is amended to read:

"37-51-311. Fees -- deposit of fees. (1)--The following fees shall be charged by the department and--paid--into--the earmarked--revenue-fund-for-the-use-of-the-board, subject to 37-1-101(6):

(a)--for each examination, a fee not to exceed \$25;

(b)--for each original resident--broker's--license issued, a fee not to exceed \$50;

(c)--for each annual--renewal--of a resident broker's license, a fee not to exceed \$30;

(d)--for each--original--nonresident--broker's--license issued, a fee not to exceed \$50;

(e)--for each annual--renewal--of a nonresident broker's license, a fee not to exceed \$30;

(f)--for each original salesperson's license issued, a fee not to exceed \$25;

(g)--for each annual--renewal--of a salesperson's license, a fee not to exceed \$15;

(h)--for each additional office or place of business, an annual fee not to exceed \$25;

(i)--for each change of place of business or change of employer or contractual associate, a fee not to exceed \$15;

(j)--for each duplicate license where the original license is lost or destroyed and affidavit is made, a fee not to exceed \$10;

(k)--for each duplicate pocket card where the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed \$10;

(2)--The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased. The board shall adopt a schedule of fees to be charged by the department and to be paid into the earmarked

1 revenue fund for the use of the board. The fees charged must
 2 be reasonably related to the cost incurred in regulating the
 3 real estate industry."

4 Section 6. Section 76-4-1101, MCA, is amended to read:

5 "76-4-1101. Definitions. Unless the context requires
 6 otherwise, in this part the following definitions apply:

7 (1) "Blanket encumbrance" shall be considered to mean
 8 a trust deed or mortgage or any other lien or encumbrance,
 9 mechanics' lien or otherwise, securing or evidencing the
 10 payment of money and affecting land to be subdivided or
 11 affecting more than one lot or parcel of subdivided land or
 12 an agreement affecting more than one such lot or parcel by
 13 which the owner or subdivider holds said subdivision under
 14 an option, contract to sell, or trust agreement.

15 (2) "Board" means the board of ~~real-estate~~ provided
 16 ~~for--in-2-15-1642~~ realty regulation provided for in [section
 17 1].

18 (3) "Department" means the department of ~~professional~~
 19 ~~and-occupational-licensing~~ provided for in title 2, chapter
 20 ~~15,--part--16~~ business regulation provided for in 2-15-1801.

21 (4) "Subdivision" and "subdivided lands" mean any
 22 tract of land which is hereafter divided into five or more
 23 parcels, a parcel of which is less than 5 acres in size, and
 24 which is offered for sale or lease outside the state of
 25 Montana."

1 Section 7. Section 76-4-1202, MCA, is amended to read:

2 "76-4-1202. Definitions. When used in this part,
 3 unless the context requires otherwise, the following
 4 definitions apply:

5 (1) "Board" means the board of ~~real-estate~~ provided
 6 ~~for--in-2-15-1642~~ realty regulation provided for in [section
 7 1].

8 (2) "Chairman" means the chairman of the board of ~~real~~
 9 ~~estate~~ realty regulation.

10 (3) "Department" means the department of ~~professional~~
 11 ~~and-occupational-licensing~~ provided for in title 2, chapter
 12 ~~15,--part--16~~ business regulation provided for in 2-15-1801.

13 (4) "Disposition" includes sale, lease, assignment, or
 14 any other transaction concerning a subdivision if undertaken
 15 for gain or profit.

16 (5) "Offer" includes every inducement, solicitation,
 17 or attempt to encourage a person to acquire an interest in
 18 land if undertaken for gain or profit.

19 (6) "Person" means an individual, corporation,
 20 government, governmental subdivision or agency, business
 21 trust, estate, trust, partnership, unincorporated
 22 association, two or more of any of the foregoing having a
 23 joint or common interest, or any other legal or commercial
 24 entity.

25 (7) "Purchaser" means a person who acquires or

attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels, units, or interests and also include any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale."

Section 8. Section 76-4-1203, MCA, is amended to read:

"76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205(1).

(2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be

completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part."

Section 9. Transfer of funds. All unexpended balances of appropriations, allocations, or other funds of the board of real estate shall be transferred to the board of realty regulation on the effective date of this act to be used for the purpose of regulating the real estate industry.

Section 10. Transition. All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51.

Section 11. Effect of termination. Section 2-8-121 does not apply to the board of real estate.

Section 12. Initial appointments. Within 30 days of the effective date of this act, the governor shall appoint the initial board of realty regulation. The initial terms

1 shall consist of one term of 1 year, one term of 2 years,
2 one term of 3 years, and two terms of 4 years.

3 Section 13. Codification. Section 1 is intended to be
4 codified in Title 2, chapter 15, part 18, and the provisions
5 of Title 2, chapter 15, part 18, apply to section 1.

6 Section 14. Repealer. Sections 2-15-1642 and
7 37-51-101, MCA, are repealed.

8 Section 15. Effective date. This act is effective on
9 passage and approval.

-End-

February 15, 1979

Chairman Brand called the meeting to order at 8:10 a.m., roll call was taken showing Rep. Azzara not in yet, Rep. Pistorio excused, and the Secretary oversleeping.

HB 606-Sponsored by Rep. Ellis, et al -- This bill is by request of the Legislative Audit Committee. It creates the Board of Realty Regulation, requires the Department of Business Regulation to regulate the Board, and amends the sunset laws to allow the continuation of the Board. He said that this was a spin-off as a result of the sunset audit, and does several things -- abolishes the present board, removes it from the Department of Professional & Occupational Licensing, recommends a 5 member board and interjects 3 consumers. There has been very little public input. Section 1 creates this board and allows it to be appointed by the Governor with the consent of the Senate. Members will be licensed brokers or salesmen actively engaged in real estate for not less than 5 years prior to appointment. Section 3 makes the terms of the board. Section 4 deals with payment of the members for time spent in business. Section 5 eliminates the fee schedule and allows for fee setting by the board.

ROBERT CUMMINS-Chairman, Board of Real Estate -- He submitted written testimony, see Attachment #2.

OPENINGS

SHANNY SMITH-Smith Realty -- He submitted written testimony, see Attachment #1.

Mr. Cummins also proposed an amendment on page 5, line 9: "including the performance of quasi-judicial function".

ELLIS-He said that he felt that HB 606 does address the problems, by allowing for the phasing-out of the old board and entrance of the new one and gives a fresh start to the industry. We do need some regulation.

JOHNSTON-How many times a year do you meet? CUMMINS-Every month as a total board for one or two days. There are two committees that meet at different times four or five times a year. STAIG-ILLER-How long has it been since they have suspended a license. CUMMINS-Three in Bozeman lately, but it had been 10 to 18 months since we had revoked a license. KOPPE-How many licensees are there in Montana? CUMMINS-4,100 licensees in the state, about 2,000 have joined the voluntary Montana Association of Realtors, and there will probably be about 5,000 by the end of the year. BARNABOUE-Why is there no competition in the industry? It is almost a closed shop. DR. CROWLEY-I don't agree, there are some realtors who advertise.

BRAND-Rep. Ellis, would you oppose the amendment suggested by Mr. Cummins?

ELLIS-No.

Placing in Attachments #1A and 1B for additional explanation, and #2C for a professional profile of the real estate industry in Montana.

(WACHSHEIM continued)-more of them will stay. At 23, the cost would be the 65% of salary. SCHNEIDER-At least go to 2% so that these people aren't subsidizing the system. The actuary is a very conservative person and he needs to be. He can't put it in and then two years later find that it costs money. I think the figure will be somewhere in the middle. The key question to this bill is that if you really feel it is important to retain people then pass it. People are starting to move out with 20 years of service because they are looking at the overall picture. QUIGLI-I think the experience outweighs the cost.

EXECUTIVE SESSION

BRAND-Ellis, Sivertsen and Gerke have come to a compromise.

SIVERTSEN-Rep. Ellis is going to make me a cosponsor, I have been working on this since '75. I have some very strong feelings about this and in HB 606 we are all in agreement. We have come up with some amendments (see Attachment #8). We have a problem in the present board and would like to get this signed and the new members appointed before the end of this session. My bill called for 4 members from the profession but we have now agreed to go to 3 members. We have talked this over, and the third amendment concurs with this. We need people with experience and 5 years experience shouldn't be much to ask for. So, maybe you will change the third amendment back again. Ellis agrees with 5, but we haven't talked to Gerke. This is a compromise and we hope it meets with your approval.

FEDA moves all amendments shown on Attachment #8.

MEMBER moved to segment the amendments, motion carried.

#1 - FEDA moved, motion carried.

#2 - JOHNSON moved, motion carried with Migone, McBride, Baeth, Bardanoue, and Brand voting NO.

#3 - LENNETT moved "4" instead of "3". JOHNSON made a substitute motion to reject the amendment totally, which carried.

#4 - KLOPP moved acceptance, which carried with Migone, Baeth, Bardanoue and Brand voting NO.

#5 - SALAS moved acceptance, which carried.

HB 606-JOHNSON moved AS AMENDED DO PASS, with Sivertsen being shown as additional cosponsor, motion carried unanimously.

HB 251-WY moved to TABLE, which carried. SIVERTSEN-Don't send this down until tomorrow. BARDANOUVE-You have a budgetary problem and may have no money to operate.

HB 179-FEDA moved DO PASS, which carried with Bardanoue abstaining.

HB 570-FEDA moved DO PASS, which carried with Smith voting NO.

HB 571-BAETH moved to hold until a letter of intent could be drafted, motion carried.

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MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

MARCH 3, 1979

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 of the State Capitol Building at 10:00 a.m.

ROLL CALL: All members were present.

HOUSE BILL 108: Chairman Hazelbaker called on Representative Edward Lien, sponsor of House Bill 108 to explain the bill to the Committee. This bill is an act to amend section 33-2-302, MCA, relating to surplus line insurance procurement.

PROPOSERS OF HOUSE BILL 108: Mrs. Josephine Driscoll of the Insurance Department, stated they are in support of House Bill 108.

Mr. Boyce Clarke, Helena, representing the Independent Insurance Agents of Montana, stated they, too, are in support of HB 108.

There was a question and answer period from the Committee.

Chairman Hazelbaker closed the hearing on House Bill 108.

HOUSE BILL 606: Representative Howard Ellis, sponsor of House Bill 606 was unable to be present at the opening of the hearing because of a conflict in hearings. Representative Harold Gerke appeared in Representative Ellis's place and explained HB 606 to the Committee. This bill transfers the functions of the Board of Real Estate to a newly created Board of Realty Regulation and attaches the new board to the Department of Business Regulation rather than the Department of Professional and Occupational Licensing

PROPOSERS OF HOUSE BILL 606: Representative Robert Sivertsen explained the bill further to the Committee.

Mr. Cliff Christian, representing the Montana Association of Realtors, stated they support HB 606. However, they oppose the proposed move of the new board from the Department of Professional and Occupational Licensing to the Department of Business Regulation. Mr. Christian's testimony is attached. Mr. Christian also offered some amendments to House Bill 606. These amendments are attached.

Representative Ellis, sponsor of HB 606, arrived at the hearing and spoke in support of the bill.

Mr. Robert Cummins, Chairman of the Board of Real Estate, spoke in support of HB 606. His testimony is attached.

OPPOSERS OF HOUSE BILL 606: Mr. George Bousilman, Director of the Office of Budget and Program Planning, stated they have a concern with moving the board to the Department of Business Regulation.

Mr. Ed Carney, representing the Department of Professional and Occupational Licensing, stated they neither support nor oppose the bill. They are concerned with the proposed move of the board from their department to the Department of Business Regulation. Mr. Carney stated that 19 percent of the funds for the department were provided by the Board of Real Estate.

There was a question and answer period from the Committee.

Senator Regan wanted to know how many boards are currently under the Department of Occupational Licensing.

Mr. Carney stated there are currently 31 boards under the department.

Chairman Hazelbaker asked Representative Sivertsen about House Bill 846 which deals with laws relating to real estate and wondered if this bill should be held up until the Committee could look at HB 846.

Representative Sivertsen stated he saw no reason for holding House Bill 606.

Senator Lowe asked Representative Sivertsen about the makeup of members of the Real Estate Board.

Representative Sivertsen stated that he felt the board should be made up of three members from the real estate profession and two members who are consumers.

Representative Gerke made closing remarks in support of the bill. He stated the board is not now a quasi-judicial board.

Chairman Hazelbaker closed the hearing on House Bill 606.

HOUSE BILL 660: Representative Patricia Gesek, sponsor of HB 660, explained the bill to the Committee. This bill requires a disability insurance policy that does not cover mental health care to conspicuously state that fact.

There were no other proponents to House Bill 660 present at the hearing.

OPPONENTS TO HOUSE BILL 660: Mrs. Josephine Driscoll from the Insurance Department stated they oppose HB 660 because it would duplicate what is already required by the present law. Mrs. Driscoll also stated that the bill does not address Blue Cross and Blue Shield in the state.

Ms. Rita Theisen, attorney for the Insurance Department, distributed some exhibits which are attached to the minutes.

Mr. Les Loble II, representing the American Council of Life Insurance, stated they are in opposition to House Bill 660.

BUSINESS & INDUSTRY COMMITTEE

Date March 3

[illegible]

TESTIMONY ON HB 606
Board of Realty Regulation
Senate Business and Industry Committee
March 3, 1979

Chairman Hazelbaker and Committee Members:

I am Robert Cummins, Chairman of the Board of Real Estate.

The Board of Real Estate's testimony on HB 606 has been and continues to be very simple -- PROTECT THE PUBLIC.

The public can be protected by assuring that the Board has adequate public representation and adequate funding to carry out its testing and licensing functions and its investigating function.

After spending months of study and tens of thousands of taxpayer dollars auditing the Board of Real Estate, the Legislative Audit Committee recommended that 3 of the 5 Board members be PUBLIC members. This decision is a sound one arrived at after months of analysis and without lobbying pressure from an industry that wants to regulate itself.

In previous hearings on bills affecting the Board of Real Estate during this session, personalities on the Board have tended to become an issue. Since the present members of the Board will be terminated on or before July 1, attention should be directed toward relevant issues. At issue is whether it would be in the public interest to allow the industry to regulate itself? Such an arrangement has never been shown to be workable in any other industry. There is no reason to believe that the real estate industry would be any different.

Lobbyists for the Montana Association of Realtors (MAR) have claimed that the real estate industry is so complex that only licensees are capable of regulating their peers. The Board does not share this view, since the Board proved to be effective in regulating the industry from 1963 through 1976 with two licensees. At pre-legislative strategy sessions, MAR wanted all Board members to be licensees. Upon learning that State law requires that the non-voting chairman of the Board be a public member, they agreed to push for "only" 4 licensees, including 3 Realtors, on the Board. When HB 286 was soundly discredited, the Realtor Association retrenched to a position of demanding that "only" 3 of the 5 Board members be licensees. This has been the make-up of the Board since 1977.

In 1977, the number of licensees on the Board was increased from 2 to 3. Following this change in the voting structure of the Board, very few licenses have been suspended or revoked even though the number of complaints against licensees has increased substantially. The reason for the small number of license suspensions and revocations is due to the broker members on the Board finding it next to impossible to second the motions by the one public voting member for suspension or revocation of licenses.

To have a voting balance on the Board, 3 of the 5 members must be PUBLIC representatives. Since one of the public members must be the non-voting chairperson, this leaves 2 public voting members to offset the voting power of the 2 industry members. If there are 3 licensees on the Board the industry representatives control the vote and the Board. Therefore, if there are 3 licensees on the Board, there may as well be 4 or even 5 licensees because the industry would, in essence, be left to regulate itself.

Two licensees on the Board should be enough to present the industry's point of view during discussions and hearings. Having no more than 2 licensees on the Board would also be compatible with the intent of the Real Estate License Act of 1963 -- protection of the public. Based on the experience of the present Board, it would be ludicrous to expect that a Board dominated by licensees would protect the public better than a Board comprised of at least 3 public members.

The Board is concerned about the welfare of the public if the industry is left to regulate itself. We would, therefore, propose that HB 606 be amended to assure that at least 3 members of the new Board be public representatives. We propose the following amendment. On page 2, line 10, replace the number "Two" with the number "Three." The amended sentence would then read, "Three members shall be representatives of the public..."

The other concern of the Board with HB 606 deals with appropriation for Board operations. For the past few years the Board has been underfinanced at the same time that the Board's earmarked revenue fund balance has grown substantially. As a result, only the testing and licensing functions of the Board have been properly carried out. Requests by the Board for per-

mission to hire investigators to properly investigate complaints against licensees were denied until late in 1978. The Board is now in a position to conduct field investigations into charges made against licensees. We therefore support the provision in the Bill that allows the new Board to adopt a schedule of fees that is reasonably related to the cost incurred in regulating the real estate industry. But we would prefer to see that the pre-1977 schedule of maximum fees are incorporated into HB 606. This schedule would set the maximum fee for: each examination -- \$50; each original broker's license -- \$50; each annual renewal of a broker's license -- \$50; each original salesman's license -- \$25; etc. (Sec. 66-1934, R.C.M. 1947.) Charging this level of fees would generate adequate income to meet Board expenses that are anticipated to be in the range of \$180,000-200,000 per year during the coming biennium.

Our only concern with having no maximum level on the fees that could be charged is that the industry representatives on the Board may view high fees as a means of "getting rid of part-time and inactive licensees." We do not know if this is the ulterior motive for the \$150 maximum fees allowed in HB 846 that will appear before this Committee soon. But we do know that this level of fees is far in excess of any reasonable level of fees needed to generate funds required to finance the Board.

In summary, the present Board believes that it is crucial for the protection of the public that a majority of the new Board members be representatives of the public. We also believe that the interests of the part-time licensees would be protected by incorporating a schedule of maximum fees that the Board could charge into the Bill. Hopefully, the members of this Committee share our interest in preserving the spirit of free enterprise in the real estate industry. A strong free enterprise system benefits both the honest, hard-working licensees and the public -- the ultimate consumer of services offered by the industry and its licensees.

COMMENTS ON H.B. 606

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE MY NAME IS CLIFF CHRISTIAN, REPRESENTING THE MONTANA ASSOCIATION OF REALTORS.

THE REAL ESTATE INDUSTRY HERE IN MONTANA IS A HIGHLY COMPLEX ONE. EVERYDAY, REALTORS AND REAL ESTATE AGENTS ARE REPRESENTING THEIR CLIENTS IN THE SALE OF HOMES, TAX FREE EXCHANGES, AND THE MARKETING OF FARMS, RANCHES AND BUSINESSES THAT ROUTINELY SELL FOR MILLIONS OF DOLLARS. MEMBERS OF THE COMMITTEE, REALTORS AND OTHER LICENSEES ARE INVOLVED IN THE LARGEST FINANCIAL TRANSACTION IN A FAMILIES LIFETIME. BECAUSE OF THIS PARTICIPATION, EXPERIENCE AND EXPERTISE IN THE FIELD OF REAL PROPERTY SALES ARE ESSENTIAL ELEMENTS NEEDED ON THE NEW BOARD OF REALTY REGULATION. THE CURRENT PROPOSAL IN H.B. 606 TO HAVE 3 LICENSEES AND 2 LAY MEMBERS SITTING ON THE BOARD, WE FEEL, PROVIDES AN EXCELLENT MIX OF EXPERIENCE AND PUBLIC REPRESENTATION THAT IS CERTAINLY IN THE PUBLIC INTEREST. WE TAKE STRONG EXCEPTION TO HAVING A MAJORITY OF LAY MEMBERS SITTING ON THIS (OR ANY OTHER) BOARD; FOR THE BOARD OF REAL ESTATE HAS SINCE ITS ENACTMENT HAD A MAJORITY OF LAY MEMBERS ON THE BOARD, WITH A TRACK RECORD THAT IS CONSTANTLY BEING CHALLENGED BY THE LEGISLATURE, THE PRESS AND THE PUBLIC AT LARGE.

THE MONTANA ASSOCIATION OF REALTORS ALSO ^{Supports} ~~SUPPORTS~~ THE REMAINDER OF H.B. 606, WITH ONE VERY STRONG EXCEPTION. THAT EXCEPTION IS THE PROPOSED ADMINISTRATIVE MOVE OF THE NEW BOARD FROM THE DEPARTMENT OF

PROFESSIONAL AND OCCUPATIONAL LICENSING TO THE DEPARTMENT OF
BUSINESS REGULATION.

THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING, WE FEEL,
HAS BEEN AN EXCELLENT UMBRELLA DEPARTMENT FOR THE BOARD OF REAL ESTATE
MR. CARNEY, AND HIS STAFF, HAVE OVER THE PAST SEVEN YEARS, BECOME
VERY KNOWLEDGEABLE ON THE INTRICACIES OF THE LAWS, RULES AND REGULATIONS
ADMINISTERED BY THE BOARD OF REAL ESTATE. TO DENY THIS^{NEW} BOARD,
ALREADY ESTABLISHED ADMINISTRATIVE EXPERTISE, WE FEEL, DEFINETLY IS
NOT IN THE PUBLIC INTEREST. TO MOVE THIS NEW BOARD, THAT WILL NEED
ALL THE KNOWLEDGE AND SKILL IT CAN MUSTER, AWAY FROM A GOOD DEPARTMENT
THAT IS FAMILIAR WITH LICENSING AND REGULATING^{OF} PROFESSIONS, WILL
DEAL A CRIPPLING BLOW WHICH IS TOTALLY UNNECESSARY.

CONSEQUENTLY, MR. CHAIRMAN, WE OFFER THESE ADMENDMENTS, WHICH AMENDS
ALL LANGUAGE IN H.B. 606 NECESSARY TO PLACE THE BOARD OF REALTY
REGULATION BACK UNDER THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL
LICENSING. WE HOPE THAT YOU WILL SERIOULY CONSIDER THESE ADMENMENTS,
AND GIVE H.B. 606 A DO PASS AS AMENDED.

THANK YOU;


CLIFF CHRISTIAN
EXECUTIVE VICE PRESIDENT
MONTANA ASSOCIATION OF REALTORS

AMENDMENTS TO HOUSE BILL NO. 606

Amend title

Title, line 7

Strike: "BUSINESS REGULATION"

Insert: "PROFESSIONAL AND OCCUPATIONAL LICENSING"

1. Page 1, lines 22 and 23
Strike: "regulation of the real estate industry be transferred to"
2. Page 1, line 24
Strike: "business regulation"
Insert: "professional and occupational licensing be established to regulate the real estate industry"
3. Page 4, line 13
Strike: "business regulation provided for in 2-15-1801"
Insert: "professional and occupational licensing provided for in Title 2, chapter 15 part 16"
4. Page 7, line 22
Strike: "business regulation provided for in 2-15-1801"
Insert: "professional and occupational licensing provided for in Title 2, chapter 15, part 16"
5. Page 8, line 14
Strike: "business regulation provided for in 2-15-1801"
Insert: "professional and occupational licensing provided for in Title 2, chapter 15, part 16"
6. Page 11, lines 9 and 10
Following: "part" on line 9
Strike: line 9 through "1" on line 10
Insert: "16"

HERSHEL CARPENTER
Broker



March 1st, 1979

Senator, Frank Hazelbaker
Senate Business and Industry Committee
Helena, Montana

Dear Senator Hazelbaker:

On Saturday March 3rd your committee will be hearing HB 606 which will create a Board of Realty Regulation within the Bureau of Business Regulation.

We fully support the concept of the Board of Realty Regulation as proposed in HB 606 with one exception. We feel that the Board should remain in the Department of Professional and Occupational Licensing.

The need for regulation of this vital industry to protect the public interest is readily apparent. At the same time, the complexity of the law pertaining to real estate and the licensing of real estate salespeople and brokers is great. We feel this requires that members of the Board have a working knowledge of the real estate profession and the laws that cover the industry.

We respectfully urge that the bill be reported out with a do pass recommendation and an amendment that it remain in the Department of Professional and Occupational Licensing.

Sincerely,

Ray Atteberry
Ray Atteberry, REALTOR

Ira M. Bakken
Ira M. Bakken, REALTOR

Tom Lehman
Tom Lehman, REALTOR

Marilyn Ströh
Marilyn Ströh, REALTOR

Carmen Murphy
Carmen Murphy, REALTOR

Glyn Verzatt, REALTOR

LANDMARK OF DOZEMAN

P.O. Box 714-720 W. Babcock
Dozeman, NE 68621

306 586-1321



BOZEMAN BOARD OF REALTORS
P. O. BOX 1095
BOZEMAN, MONTANA 59715

March 1, 1979

Senator Frank Hazelbaker
Senate Business and Industry Committee
Helena, Montana

Dear Senator Hazelbaker:

On Saturday March 3rd, your committee will be hearing HB 606 which reconstitutes the Sunseted Board of Real Estate.

On behalf of the Board of Directors of the Bozeman Board of REALTORS, I urge you and your committee to favorably review the bill with one change. We feel that the new Board of Realty Regulation should remain in the Department of Professional and Occupational Licensing rather than be created in the Bureau of Business Regulation.

We feel that it is imperative that the real estate profession be regulated to insure that the public interest be protected as mandated by the statutes of Montana. These statutes that bear on real estate and on the licensing of real estate brokers and salespersons are involved and complex, and we feel that a knowledge of the profession is essential and composition of the new Board of Realty Regulation should reflect a mix of experience as well as bipartisan lay people. Consequently, we favor the proposed mix of 3 licensees and 2 lay people.

Thank you for your concern and attention to this very important bill.

Sincerely,

Ray Atteberry
Ray Atteberry, President
Bozeman Board of REALTORS



HELEN JOHNSON, Realtor

416 North Seventh • P.O. Box 1067 • Telephone (406) 586-5472
BOZEMAN, MONTANA 59715

March 1, 1979

Senator Frank Hazelbaker, Chairman
and Members
Senate Business & Industry Committee
Senate Office Building
Helena, MT 59601

Gentlemen,

We, of this office, urge you to keep the Board of Real Estate
under Professional Licensing.

We strongly support 606 as amended.

We feel that people knowledgeable regarding Real Estate
transactions should be responsible for protecting the public,
namely buyers and sellers, and that the large area this covers
justifies our remaining under Professional Licensing.

We favour the membership of the board including three Real
Estate Brokers and two laymen.

Thank you for your consideration.

Sincerely,

Helen Johnson, Broker

HJ:lf

COOK - BELL REAL ESTATE

Telephone: (406) 586-33

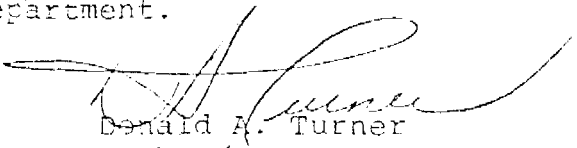
611 W. Main • Bozeman, Montana 59715

March 2, 1979

Senator Frank Hazelbaker
Chairman, Business & Industry Committee
Montana Senate, Helena, MT 59601

Dear Sir:

The Owners and Employees of Cook-Bell Real Estate are in support of House Bill 606, but request that it be amended to read that the Board of Real Estate should be regulated under the Professional and Occupational Licensing Department versus the Business Regulation Department.


Donald A. Turner
Broker/Owner



Bozeman

phone 587-4538

REALTY

SERVICE - HONESTY - ACTION

703 West Mendenhall — Bozeman, Montana 59715



GLENN BUSS
BROKER
PHONE 586-2288

March 1, 1979

Senator Frank Hazelbaker
Montana Senate
Helena, MT

RE: Real Estate Senate Bill 606

Dear Senator Hazelbaker:

We respectfully ask your consideration in passing
S.B. 606 with the following amendments: That we REALTORS
be left under the Department of Professional Licensing
and NOT the Bureau of Business.

Sincerely yours,

Glenn A. Buss

John Austin

Nina Johnson

Lynne Gardner

CW



REALTOR

Sundance

Realty & Investment Inc.

Member: Multiple Listing Service
Chamber of Commerce

28 February 1979

Senator Frank Hazelbaker
Capitol Station
Helen, MT 59601

Dear Senator Hazelbaker:

We are writing you in favor of Senate Bill #606 supporting the concept of the three realtors-two laymen board. However, we feel it to be in the best interest of Montana's Realtors to be under the Department of Professional Licensing, and not the Department of Business Regulations. We would support an amendment leaving us under the Department of Professional Licensing as we now are.

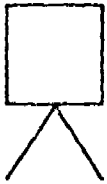
Thank you for your consideration concerning this much needed bill.

Sincerely,

Sundance Realty & Investment, Inc.

Dan Henderson *Dan Henderson*
Dennis Hardin *Dennis Hardin*
Helen Richey *Helen Richey*
Shirley Wise *Shirley Wise*
Suzanne Allen *Suzanne Allen*
Mary Jo Jackson *Mary Jo Jackson*
Jim Biram *Jim Biram*

pe



(BOX K)
LAND
CO.

GARY E. FRANCE
BROKER

P.O. BOX 45
BELGRADE, MONTANA 59714
OFFICE: 406-388-4737
RES.: 406-388-6007

February 22, 1979

Senator Frank Hazelbaker
Montana State Senate
Helena, MT 59061

Dear Senator;

We at the Box Lazy K Land Co.'s office here in Belgrade are taking this opportunity to write you stating our support of Senate Bill 606.

We would however suggest that the bill be amended to retain the Real Estate Board's operation under the Department of Professional and Occupational Licensing and not under the Department named in the bill as it is now written.

Your consideration on the matter will be appreciated.

Sincerely,

Gary France--Broker

Gary France

Gue Whiteman--Salesperson

"Gue" Whiteman

Joe Eblen--Salesperson

Joe Eblen



Real Estate Brokers, Inc.

PERSONAL PROFESSIONAL SERVICE

DONNA J. STRAND, Broker

BEA FLANSAAS, Broker,

MIMI CAMPBELL, Broker

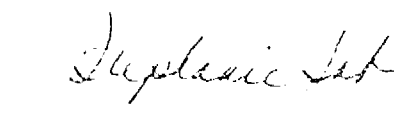
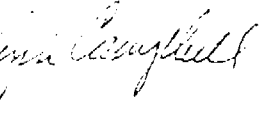
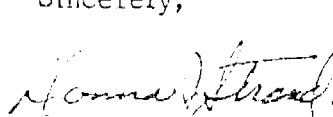
March 1, 1979

Senator Frank Hazelbaker
Chairman
Business and Industry Committee
State Capitol Building
Helena, Montana

Dear Senator Hazelbaker:

We are in accord and support HB 606 with one exception. That exception being that the new Board of Realty Regulation be taken out of the Business Regs Department and placed into the Department of Professional Occupations and Licensing.

Sincerely,



Donna J. Strand
Broker

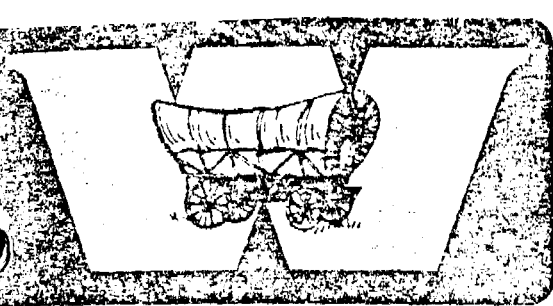
Bea Flansaas
Broker

Mimi Campbell
Broker

Stephanie Sabo
Broker

mc/ms





WAITE & COMPANY

BOX 430

140 E. MAIN STREET

TELEPHONE: 586-3351

INSURANCE PIONEERS • ESTABLISHED 1880

BOZEMAN, MONTANA 59715

February 23, 1979

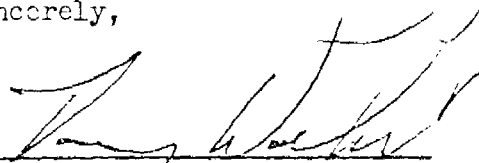
Senator Frank Hazelbaker
Chairman
Senate Business & Industry Committee

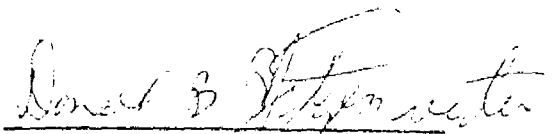
Dear Frank:

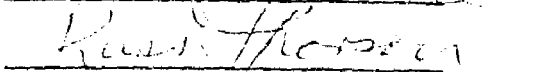
We would appreciate your favorable consideration of House Bill 606. We would, however, wish the Board of Real Estate to be under the direction of the Department of Professional and Occupational Licensing.

Thank you.

Sincerely,


Burton Wastcoat, Broker







1000 1/2 N. 1st St.
Helena, Montana 59601
(406) 261-1111

March 1, 1979

Mr. Frank Hazelbaker, Chairman
Senate Business and Industry Committee
Capital Station
Helena, Montana 59601

Dear Mr. Hazelbaker,

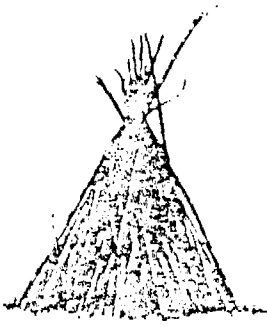
We would like to support the passage of House Bill 606 with an amendment that the Board of Real Estate be kept under the Department of Professional Occupations and Licensing.

As professionals in the real estate field, we feel the public interest would be better served with this amendment.

Sincerely,


Laura K. Hanson, Broker


Jerry R. Gossel, Salesman



HAYNES REAL ESTATE

P.O. BOX 521, BOZEMAN, MONTANA 59715

PHONES 406 586-3377 — 587-4732

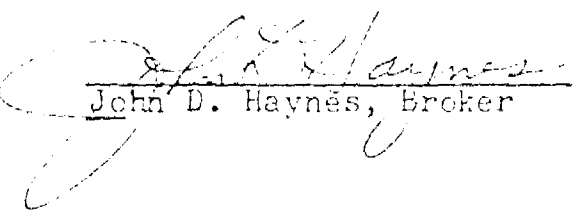
Feb. 23, 1979

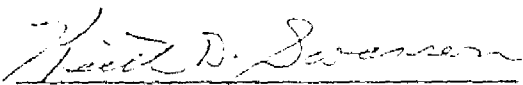
Senator Frank Hazelbaker
Montana State Senate
Helena, Mont. 59601

Dear Senator Hazelbaker:

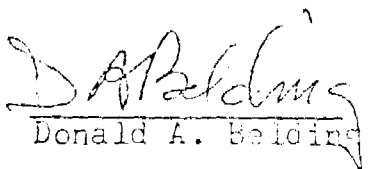
This is to advise that we are in favor of Senate Bill #606. We would, however, ask that it be amended to state that the Board of Real Estate be placed under the Department of Professional Licensing and not the Department of Business Regulations.

Sincerely,


John D. Haynes, Broker


Keith D. Swanson


Alice Jandt


Donald A. Balding





HOMES—ACREAGES—RANCHES—COMMERCIAL PROPERTIES—RENTALS—MANAGEMENT

PAUL K. DUDLEY—REALTOR

BOX 1068

PHONE 526-9386

BOZEMAN, MONTANA 59715

February 28, 1979

Senator Frank Hazelbaker
Capital Station
Helena, Montana 59601

Dear Sir:

We, the undersigned, are in favor of H.B. 606 if it is amended, to leave it under the Department of Professional and Occupational Licensing, and not put it under the Department of Business Regulations.

ACTION REALTY, formerly
PAUL K. DUDLEY & ASSOCIATES

Robert L. Adams
Robert L. Adams

Paul K. Dudley
Paul K. Dudley

Helen F. Frank
Helen F. Frank

Paul J. Stark
Paul J. Stark

RLA:drd

MEMBER

LOCAL—STATE—NATIONAL ASSOCIATION OF REALTORS AND FARM AND LAND INSTITUTE



19-No.-10th Avenue
BOX 309
BOZEMAN, MONTANA 59715
Area Code 406-587-5158



Residential - Commercial - Investment Properties

February 28, 1972

Senator Frank W. Hazelbaker
Chairman, Business and Industry Committee
Montana Senate
Helena, Montana 59601

Dear Senator Hazelbaker:

We wish to be on record that we favor the passage of House Bill No. 606 forming the Board of Realty Regulation.

We strongly recommend that the Bill as written be amended, and that the Board be placed under the direction of the Professional Occupation and Licensing Department instead of Department of Business Regulation.

Sincerely yours,

John R. Rosenthal
Ed Rice
Dan H. Hargis
William H. Hargis
James H. Hargis
John H. Hargis
James H. Hargis



Associated Agency Inc.

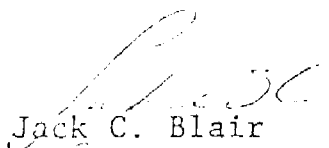
February 28, 1979

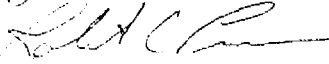
Senator Frank Hazelbaker
State Capital
Helena, MT 59601

Dear Senator Hazelbaker,

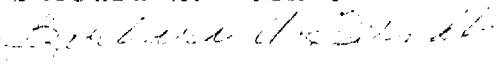
We at Associated Agency are in favor of SB 606 if amended to place the Board of Real Estate under the Department of Professional & Occupational Licensing.

Thank you for considering our views on this important bill to the Real Estate Profession.


Jack C. Blair


Robert C. Pearson

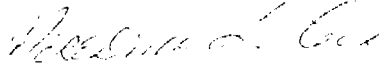
Barbara A. Berndt

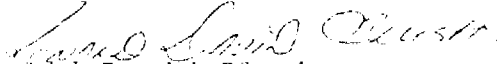

Richard R. Mayfield


Carol P. Chambers

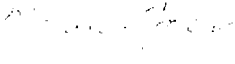

Bradley J. Bean

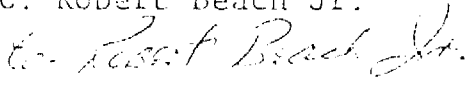

Randolph S. White

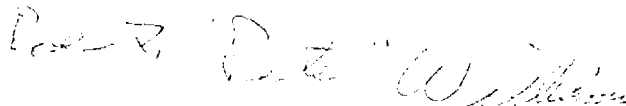

Meredith L. Cox


Ronald David Blush

Marla Joos


C. Robert Beach Jr.


Roe F. (Pete) Williams





Triple Creek Realty

3/1/79

Jack Greenway,
President
Montana Assn. of
REALTORS

Dear Jack:

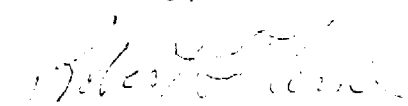
Please use this letter in any manner you see fit to secure passage of H. B. 606 as it is now written with one exception:

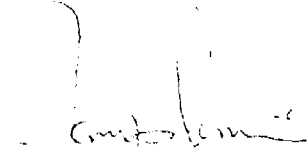
We would like to have the Real Estate Board under the jurisdiction of the Board of Occupational and Professional Licensing rather than being under the Department of Business Regulation as presently required in HB 606.

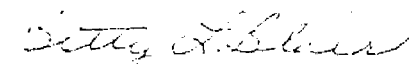
Thanks for your work in our behalf.

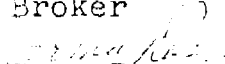
Those of us in town have signed this letter, and those not here have asked us to say they also agree with the letter.

Sincerely,


Robert F. Kern
Broker


James Phennicie
Broker

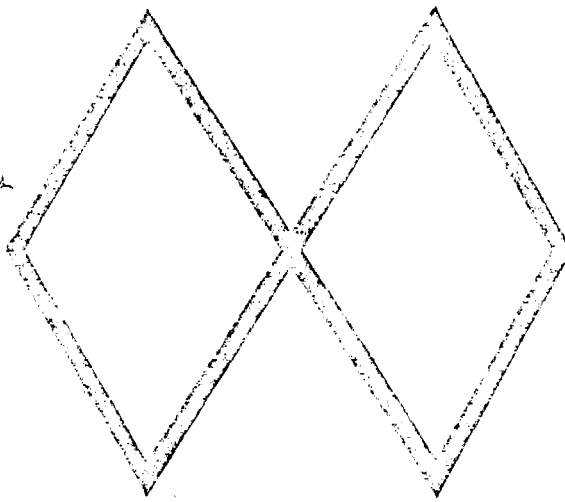
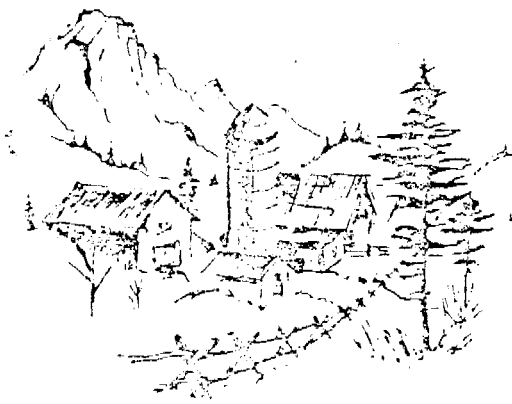

Betty Blair
Broker


Erma Ross
Broker

REAL ESTATE - DEVELOPMENT - CONSULTANT

ROBERT F. KERN, Broker •

• BOZEMAN, MONTANA 59715 • (406) 586•



**DOUBLE
DIAMOND**
PROPERTIES
AND INSURANCE

POST OFFICE BOX 38 • BOZEMAN, MONTANA 59715 • (406) 587-9213

March 2, 1979

Montana State House of Representatives

Re: House Bill 606 regarding administration of matters pertaining to the licensing and monitoring of persons in the real estate industry

As a matter of past practice, I have found, in the operation of a real estate brokerage office, that I have been able to obtain informed, immediate answers to questions concerning policy, legal interpretations and general directives concerning the day-to-day problems, as well as unusual occurrences in the real estate profession.

With reference to the proposal that such administration be assigned to the Department of Business Regulation rather than remaining under the direction of the Department of Professional and Occupational Licensing, my concern is that a Board of Realty Regulation operating under a vast blanket of business regulation may become so diluted as to personnel with the intrinsic knowledge required, not to mention the direct authority to decide, that matters requiring immediate resolution may become bogged down in the morass of hierarchy unanswerably anonymous to our licensed profession.

Other structuring of said House Bill 606 seems to cover in a fair and equitable manner the constitution of a new board to administer real estate related matters, but I fail to understand the underlying motivation for enlarging and expanding a department to the point where it may become unwieldy in the handling of items peculiar to the real estate professions' day-to-day needs and requirements.

Sincerely,

Lillian E. Williams
Broker-Owner



Insurance & Realty Center



P.O. BOX 1070 • 29 WEST MAIN • BELGRADE, MONTANA 59714 • (406) 388-4227

March 1, 1979

Mr. Frank Hazelbaker
Capitol Station
Helena, Mt. 59601

RE: HB 606

Dear Mr. Hazelbaker:

We ask that House Bill 606 be accepted with one amendment—that the Board of Real Estate be kept under the Department of Professional Occupations & Licensing not put under the Department of Business Regulations.

Thank you for your consideration.

Sincerely,

Curtis J. Backlin, BROKER

Jim Lether, REALTOR

Terri Lether, REALTOR

Bruce Karia, REALTOR

Peg Potter, REALTOR



February 28, 1979

Mr. Frank Hazelbaker
Senate, Capitol Station
Business and Industry
Helena, Montana 59601

Dear Mr. Hazelbaker:

We are in favor of House Bill 606 and would like it accepted with one amendment - that the Board of Real Estate be kept under the Department of Professional Occupations and Licensing.

Sincerely,

Marian R. Cook

Marian R. Cook

Broker - Owner

Becky Long

Becky Long

Salesperson

Joe Jackson

Joe Jackson

Salesperson

Celie Penwell

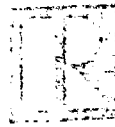
Celie Penwell

Salesperson

Dave Stephens

Dave Stephens

Salesperson



REALTY WORLD — Land Office
628 West Main, Bozeman, MT 59715
Telephone: (406) 587-3164



February 28, 1979

Senator Frank Haselbaker, Chairman
Senate Business & Industry Committee
Helena, Montana

Dear Senator:

We would like to express our support of HB 606 with one amendment. We would urge that the Board of Real Estate remain with the Department of Professional Occupations and Licensing.

Sincerely,

David Jarrett
Broker

Sales Assoc.

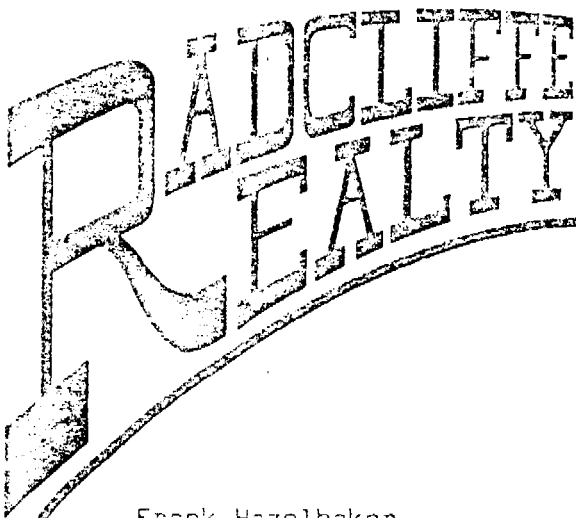
Gloria Radabaugh

Sales Assoc.

Sales Assoc.

Each office is independently owned and operated





613 WEST LAMME — BOZEMAN, MONTANA 59715

February 28, 1979

Frank Hazelbaker
Chairman of the
Business and Industrial Committee
State Capital Building
Helena, Montana

Gentlemen:

This is to inform you that House Bill Number 686 has our complete support. However we definately would like to see this bill amended so the Board of Real Estate would remain with The Department of Professional and Occupational Licensing.

Sincerely,

James H. Radcliffe
James H. Radcliffe

Owner - Broker

JHR:acn

HOMESTEAD REALTY

127 WEST MAIN • BOZEMAN, MONTANA 59715 • PHONE (406) 587-3108



REALTOR

February 28, 1979

Mr. Frank Hazelbaker
Business and Industry
Helena, Montana 59601

Dear Mr. Hazelbaker,

We, the undersigned, approve the passage of House Bill #606 with the exception being that the new Board of Real Estate regulations should be placed under the Department of Professional and Occupational Licensing rather than in the Department of Business Regulations.

Thank-you for your cooperation and consideration in this matter.

Best personal regards,

A handwritten signature in cursive script, appearing to read 'Tom Langel'.

Thomas H. Langel

A handwritten signature in cursive script, appearing to read 'Lee Oldenburger'.

Lee Oldenburger

A handwritten signature in cursive script, appearing to read 'Carole Oddy'.

Carole Oddy

A handwritten signature in cursive script, appearing to read 'Herbert I. Thompson'.

Herbert I. Thompson

March 1, 1979

Mr. Frank Hazelbaker
Capital Station
Helena, MT 59601

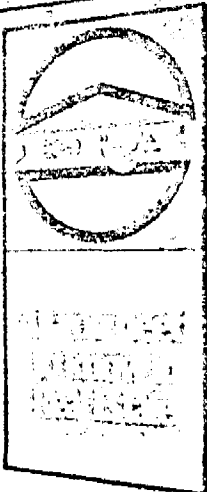
Dear Mr. Hazelbaker,

Regarding House Bill #606 we the undersigned, my associates and I, would like to voice our opinion through you in support of H.B. #606 with the following amendment - that the Board of Real Estate be kept under the Department of Professional Occupation and Licensing and not under the Business Regulatory Agencies.

Thanking you in advance:

Paul D. Lytle, Broker
Charles Swenson, Sales Associate
Jim Loessberg, Sales Associate
Thomas Blake, Sales Associate
Jan McAndrew, Sales Associate

Paul D. Lytle
Charles Swenson
Janice L. McAndrew
Jim Loessberg
Tom Blake



CENTURY REALTY
COMPANY, INC.

P.O. Box 1414
2304 W. Main
Bozeman, Montana 59715

Each office independently owned and operated

406 587 0000

28 FEB 1979

HON. FRANK HAZEBAKER

WE SUPPORT H.B. # 606

WITH AN AMMENDMENT
RETAINING JURISDICTION
BY THE DIVISION OF
PROFESSIONAL & OCCUPATIONAL
LICENSING.

D. J. Heath
Lyle A. Berg
Sam H. [unclear]
John [unclear]

DISPOSITION OF HOUSE BILL 606: Senator Goodover distributed proposed amendments to HB 606 to the Committee.

Senator Regan stated she objects to the "five years" in the bill.

Mr. John Northey, representing the Legislative Auditor, stated that the regulatory function could exist in either department.

A Roll Call Vote was taken on the motion to strike the five years as it appears in the bill. The motion failed on a vote of 6-3.

Senator Regan made a substitute motion that the Committee accept three years in lieu of five. The substitute motion passed by a Roll Call Vote of 8-1.

Senator Goodover moved that House Bill 606 be concurred in as amended. The Committee voted that HOUSE BILL 606 BE CONCURRED IN AS AMENDED. Those voting "no" were Senators Blaylock, Mehrens, and Regan.

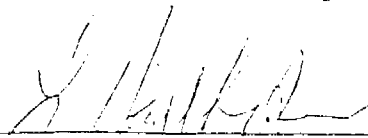
Senator Goodover will carry House Bill 606 on the floor.

DISPOSITION OF HOUSE BILL 609: A Roll Call Vote was taken on this motion. Senator Lowe moved that HB 609 Do Pass. The motion failed to pass. Senator Regan made a motion that HB 609 be not concurred in. She withdrew this motion since Senator Dover was not present and unable to vote.

No executive action was taken on House Bill 609.

DISPOSITION OF HOUSE BILL 881: Senator Regan moved that House Bill 881 do not pass. Senator Kolstad made a substitute motion that HB 881 Do Pass. A Roll Call Vote was taken on the motion. The Committee voted 5 - 4 that HOUSE BILL 881 BE CONCURRED IN. Senator Kolstad will carry the bill on the floor. No executive action was taken on HB. 846. The bill was turned over to Staff Attorney, Bob Pyfer, to work on amendments.

ADJOURN: There being no further business, the meeting adjourned at 12:10 p.m.


SENATOR FRANK HAZLEAKER, Chair

1 March 7, 1979.

1 STATEMENT OF INTENT RE: HB 606

2
3
4 A statement of intent is required for HB 606 in that it
5 delegates rulemaking authority to the board of realty
6 regulation in Section 8.

7 Section 8 allows the board to prescribe rules relating
8 to:

9 "(a) provisions for advertising standards to assure
10 full and fair disclosure;

11 (b) provisions for escrow or trust agreements or other
12 means reasonably to assure that all improvements referred to
13 in the application for registration and advertising will be
14 completed and that purchasers will receive the interest in
15 land contracted for;

16 (c) provisions for operating procedures; and

17 (d) other rules necessary and proper to accomplish the
18 purpose of this part."

19 It is intended that only those rules necessary to carry
20 out the above functions will be adopted by the board of
21 realty regulation. All rules should have as their primary
22 purpose the protection of the public. No rules may be
23 adopted which restrict entry into the real estate industry
24 except as expressly authorized by statute.

25 First adopted by the SENATE COMMITTEE OF THE WHOLE on

HB 606

HOUSE BILL NO. 606

INTRODUCED BY ELLIS, GERKE, ELLERD, SCULLY, SIVERTSEN
BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
REGULATION OF THE REAL ESTATE INDUSTRY BY A BOARD OF REALTY
REGULATION CREATED IN THE DEPARTMENT OF BUSINESS--REGULATION
~~PROFESSIONAL AND OCCUPATIONAL LICENSING;~~ TERMINATING
OPERATION OF THE BOARD OF REAL ESTATE ~~ON--JULY--1,--1979~~
~~IMMEDIATELY;~~ ELIMINATING REFERENCES TO THE BOARD OF REAL
ESTATE; ~~PERMITTING ADOPTION OF A FEE SCHEDULE;~~ ~~PERMITTING~~
~~ADOPTION OF A FEE SCHEDULE;~~ AMENDING SECTIONS 2-8-121,
37-51-102, 37-51-205, ~~37-51-311,~~ 76-4-1101, 76-4-1202, AND
76-4-1203, MCA; REPEALING SECTIONS 2-15-1642 AND 37-51-101,
MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112,
will terminate the board of real estate and require a
performance evaluation of the board by the legislative audit
committee; and

WHEREAS, as a result of the performance evaluation, the
legislative audit committee recommends that the board of
real estate be abolished and ~~regulation of the real estate~~
~~industry be transferred to~~ the board of realty regulation in
the department of ~~business--regulation~~ PROFESSIONAL AND

OCCUPATIONAL LICENSING BE ESTABLISHED TO REGULATE THE REAL
ESTATE INDUSTRY and that certain statutory provisions be
amended or repealed.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Board of realty regulation.

(1) There is a board of realty regulation.

(2) The board consists of five members appointed by
the governor with the consent of the senate. ~~Two THREE~~
members shall be licensed real estate brokers or salesmen
who ~~have--been~~ ARE actively engaged in the real estate
business as a broker or salesman in this state ~~for--not--less~~
~~than 5 3 continuous--years--before--appointment.~~ ~~Three TWO~~
members shall be representatives of the public who are not
state government officers or employees and who are not
engaged in business as a real estate broker or salesman. The
members shall be:

(a) residents of this state; and

(b) appointed so not more than three members are from
the same congressional district.

(3) Not more than three members, including the
chairman, may be from the same political party.

(4) The members shall serve staggered terms of 4
years. A MEMBER MAY NOT SERVE MORE THAN TWO TERMS OR ANY
PORTION THEREOF.

REFERENCE BILL: Includes Free Joint -2-
Conference Committee Report
Dated 3/29/79

HB 606

1 (5) The board is allocated to the department for
2 administrative purposes only as prescribed in 2-15-121.

3 Section 2. Section 2-8-121, MCA, is amended to read:

4 "2-8-121. Effect of termination. Upon ~~Unless otherwise~~
5 ~~provided, upon~~ termination, each agency or unit shall
6 continue in existence until July 1 of the next succeeding
7 year for the purpose of winding up its affairs. During the
8 windup period, termination does not reduce or otherwise
9 limit the powers or authority of each respective agency
10 except that no action may be taken which would continue in
11 effect beyond the 1-year windup period. Upon the expiration
12 of the 1 year after termination, each agency not modified or
13 reestablished shall be abolished and all unexpended balances
14 of appropriations, allocations, or other funds shall revert
15 to the fund from which they were appropriated or, if that
16 fund is abolished, to the general fund."

17 Section 3. Section 37-51-102, MCA, is amended to read:

18 "37-51-102. Definitions. Unless the context requires
19 otherwise, in this chapter the following definitions apply:

20 (1) "Board" means the board of real-estate-provided
21 ~~for-in-2-15-1642 realty regulation provided for in [section~~
22 ~~1]].~~

23 (2) "Broker" includes an individual who for another or
24 for a fee, commission, or other valuable consideration or
25 who with the intent or expectation of receiving the same

1 negotiates or attempts to negotiate the listing, sale,
2 purchase, rental, exchange, or lease of real estate or of
3 the improvements thereon or collects rents or attempts to
4 collect rents or advertises or holds himself out as engaged
5 in any of the foregoing activities. The term "broker" also
6 includes an individual employed by or on behalf of the owner
7 or lessor of real estate to conduct the sale, leasing,
8 subleasing, or other disposition thereof at a salary or for
9 a fee, commission, or any other consideration. The term
10 "broker" also includes an individual who engages in the
11 business of charging an advance fee or contracting for
12 collection of a fee in connection with a contract by which
13 he undertakes primarily to promote the sale, lease, or other
14 disposition of real estate in this state through its listing
15 in a publication issued primarily for this purpose or for
16 referral of information concerning real estate to brokers,
17 or both, and any person who aids, attempts, or offers to
18 aid, for a fee, any person in locating or obtaining any real
19 estate for purchase or lease.

20 (3) "Department" means the department of professional
21 and occupational licensing-provided-for-in-title-2--chapter
22 ~~15--part--16 business regulation provided for in 2-15-1891~~
23 PROFESSIONAL AND OCCUPATIONAL LICENSING, PROVIDED FOR IN
24 TITLE 2, CHAPTER 15, PART 16.

25 (4) "Person" includes individuals, partnerships,

1 associations, and corporations, foreign and domestic, except
2 that when referring to a person licensed under this chapter,
3 it means an individual.

4 (5) "Real estate" includes leaseholds as well as any
5 other interest or estate in land, whether corporeal,
6 incorporeal, freehold, or nonfreehold and whether the real
7 estate is situated in this state or elsewhere.

8 (6) "Salesman" includes an individual who for a
9 salary, commission, or compensation of any kind is employed,
10 either directly, indirectly, regularly, or occasionally, by
11 a real estate broker to sell, purchase, or negotiate for the
12 sale, purchase, exchange, or renting of real estate."

13 Section 4. Section 37-51-205, MCA, is amended to read:

14 "37-51-205. Compensation of members -- expenses --
15 ~~imitation.~~ (1) Each member of the board shall receive as
16 compensation for each ~~one-half~~ day or ~~portion~~ thereof
17 actually spent on his official duties the sum of ~~\$750~~ ~~\$25~~
18 ~~\$25~~ and travel expenses, as provided for in 2-18-501 through
19 2-18-503, connected with the performance of other duties
20 provided for by the board.

21 (2) ~~No member of the board may be reimbursed from the~~
22 ~~board's earmarked revenue fund for travel outside the state~~
23 ~~on business of the board.~~

24 Section 5. ~~Section 37-51-311, MCA, is amended to read:~~
25 "37-51-311. ~~Fees -- deposit of -- fees -- (1) -- The~~

1 following fees shall be charged by the department and paid
2 into the earmarked revenue fund for the use of the board
3 subject to 37-1-101(6):

4 (a) ~~for each examination, a fee not to exceed \$25~~

5 (b) ~~for each original resident broker's license~~
6 ~~issued, a fee not to exceed \$50~~

7 (c) ~~for each annual renewal of a resident broker's~~
8 ~~license, a fee not to exceed \$30~~

9 (d) ~~for each original nonresident broker's license~~
10 ~~issued, a fee not to exceed \$50~~

11 (e) ~~for each annual renewal of a nonresident broker's~~
12 ~~license, a fee not to exceed \$30~~

13 (f) ~~for each original salesman's license issued, a fee~~
14 ~~not to exceed \$25~~

15 (g) ~~for each annual renewal of a salesman's license, a~~
16 ~~fee not to exceed \$15~~

17 (h) ~~for each additional office or place of business~~
18 ~~an annual fee not to exceed \$25~~

19 (i) ~~for each change of place of business or change of~~
20 ~~employer or contractual associate, a fee not to exceed \$15~~

21 (j) ~~for each duplicate license, where the original~~
22 ~~license is lost or destroyed and affidavit is made, a fee~~
23 ~~not to exceed \$10~~

24 (k) ~~for each duplicate pocket card, where the original~~
25 ~~pocket card is lost or destroyed and affidavit is made, a~~

1 fee-not-to-exceed-\$10.
 2 ~~{2}--The--board--shall--adopt--a--schedule--of--fees--within~~
 3 ~~the--limits--set--by--this--section--However--a--fee--once--set--for~~
 4 ~~one--of--the--items--for--which--a--fee--is--charged--cannot--be~~
 5 ~~increased--or--decreased--until--at--least--1--year--has--passed~~
 6 ~~since--the--fee--for--that--particular--item--was--last--increased--or~~
 7 ~~decreased. The--board--shall--adopt--a--schedule--of--fees--to--be~~
 8 ~~charged--by--the--department--and--to--be--paid--into--the--earmarked~~
 9 ~~revenue--fund--for--the--use--of--the--board. The--fees--charged--must~~
 10 ~~be--reasonably--related--to--the--cost--incurred--in--regulating--the~~
 11 ~~real--estate--industry."~~

12 SECTION 5. THERE IS A NEW MCA SECTION THAT READS:

13 Schedule of fees. The board shall adopt a schedule of
 14 fees to be charged by the department and to be paid into the
 15 earmarked revenue fund for the use of the board. The fees
 16 charged must be reasonably related to the cost incurred in
 17 regulating the real estate industry.

18 Section 6. Section 76-4-1101, MCA, is amended to read:

19 "76-4-1101. Definitions. Unless the context requires
 20 otherwise, in this part the following definitions apply:

21 (1) "Blanket encumbrance" shall be considered to mean
 22 a trust deed or mortgage or any other lien or encumbrance,
 23 mechanics' lien or otherwise, securing or evidencing the
 24 payment of money and affecting land to be subdivided or
 25 affecting more than one lot or parcel of subdivided land or

1 an agreement affecting more than one such lot or parcel by
 2 which the owner or subdivider holds said subdivision under
 3 an option, contract to sell, or trust agreement.

4 (2) "Board" means the board of real-estate--provided
 5 for--in--2-15-1642 realty regulation provided for in [section
 6 1].

7 (3) "Department" means the department of professional
 8 and occupational licensing, provided for in Title 2, chapter
 9 15, part 16 business regulation provided for in 2-15-1891
 10 PROFESSIONAL AND OCCUPATIONAL LICENSING, PROVIDED FOR IN
 11 TITLE 2, CHAPTER 15, PART 16.

12 (4) "Subdivision" and "subdivided lands" mean any
 13 tract of land which is hereafter divided into five or more
 14 parcels, a parcel of which is less than 5 acres in size, and
 15 which is offered for sale or lease outside the state of
 16 Montana."

17 Section 7. Section 76-4-1202, MCA, is amended to read:

18 "76-4-1202. Definitions. When used in this part,
 19 unless the context requires otherwise, the following
 20 definitions apply:

21 (1) "Board" means the board of real-estate--provided
 22 for--in--2-15-1642 realty regulation provided for in [section
 23 1].

24 (2) "Chairman" means the chairman of the board of real
 25 estate realty regulation.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 2, Chapter 15, Part 16 ~~business regulation provided for in 2-15-1881~~ PROFESSIONAL AND OCCUPATIONAL LICENSING, PROVIDED FOR IN TITLE 2, CHAPTER 15, PART 16.

(4) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision if undertaken for gain or profit.

(5) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.

(6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(8) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner.

(9) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five or more lots, parcels,

units, or interests and also include any land, whether contiguous or not, if five or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale."

Section 8. Section 76-4-1203, MCA, is amended to read:

"76-4-1203. Administration and rules. (1) This part shall be administered by the board. In the administration of this part, the board shall have all of the powers and duties as stated in 37-51-201(2), (3), and (4) and 37-51-205(1).

(2) The board shall adopt reasonable rules relating to the administration of this part, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) provisions for advertising standards to assure full and fair disclosure;

(b) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) provisions for operating procedures; and

(d) other rules necessary and proper to accomplish the purpose of this part."

Section 9. Transfer of funds. All unexpended balances of appropriations, allocations, or other funds of the board

1 of real estate shall be transferred to the board of realty
2 regulation on the effective date of this act to be used for
3 the purpose of regulating the real estate industry.

4 Section 10. Transition. All orders and rules relating
5 to regulation of the real estate industry made by the board
6 of real estate remain in full force and effect until revoked
7 or modified in accordance with law by the board of realty
8 regulation. The records and documents of the board of real
9 estate are transferred to the board of realty regulation.
10 Licenses, permits, and certificates issued prior to the
11 effective date of this act remain valid under the same terms
12 and conditions as when issued and are subject to the
13 provisions of Title 37, chapter 51.

14 Section 11. ~~Effect of termination~~ TERMINATION OF BOARD
15 OF REAL ESTATE. NOTWITHSTANDING THE PROVISION OF 2-8-103(1),
16 THE BOARD OF REAL ESTATE TERMINATES ON THE EFFECTIVE DATE OF
17 THIS ACT. Section 2-8-121 does not apply to the board of
18 real estate.

19 Section 12. Initial appointments. Within 30 days of
20 the effective date of this act, the governor shall appoint
21 the initial board of realty regulation. The initial terms
22 shall consist of one term of 1 year, one term of 2 years,
23 one term of 3 years, and two terms of 4 years.

24 Section 13. Codification. Section 1 is intended to be
25 codified in Title 2, chapter 15, part 16, and the

1 provisions of Title 2, chapter 15, part 16, apply to
2 section 1.

3 Section 14. Repealer. Sections 2-15-1642 and
4 37-51-101, MCA, are repealed.

5 Section 15. Effective date. This act is effective on
6 passage and approval.

-End-

STATE OF MONTANA

Request No. 273 79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 1979, there is hereby submitted a Fiscal Note for House Bill 606 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

An act providing for regulation of the Real Estate Industry by a Board of Realty Regulation created in the Department of Business Regulation.

ASSUMPTIONS:

1. The duties of the Real Estate Board will be assumed under the Department of Business Regulation on July 1, 1979.
2. The Board will meet 12 times per year.
3. 4 FTE will be required to carry out the provisions of this act.
4. The workload after the transfer will remain the same.

FISCAL IMPACT:

	FY 80	FY 81
Anticipated revenue	\$160,187	\$164,789
Anticipated expenditures	<u>160,187</u>	<u>164,789</u>
Net fiscal impact	<u>0</u>	<u>0</u>

Revenue and expenditures will accrue to an earmarked revenue fund account.

COMMENT:

This board, currently under the Department of Professional and Occupational Licensing contributes to the Centralized Services Program for services performed for the Department. The elimination of these funds could increase the amount contributed by the remaining boards not scheduled for sunset at this time.

Carolyn Dearing for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 2-14-79